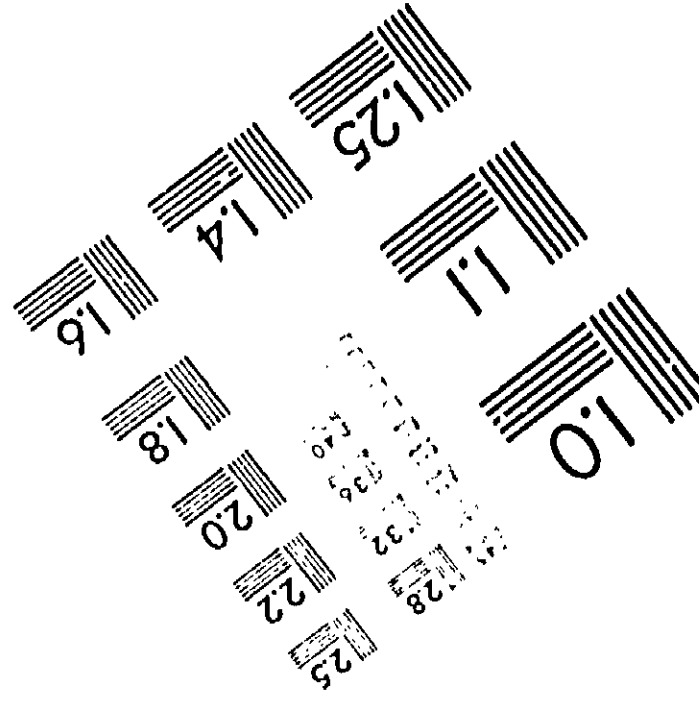
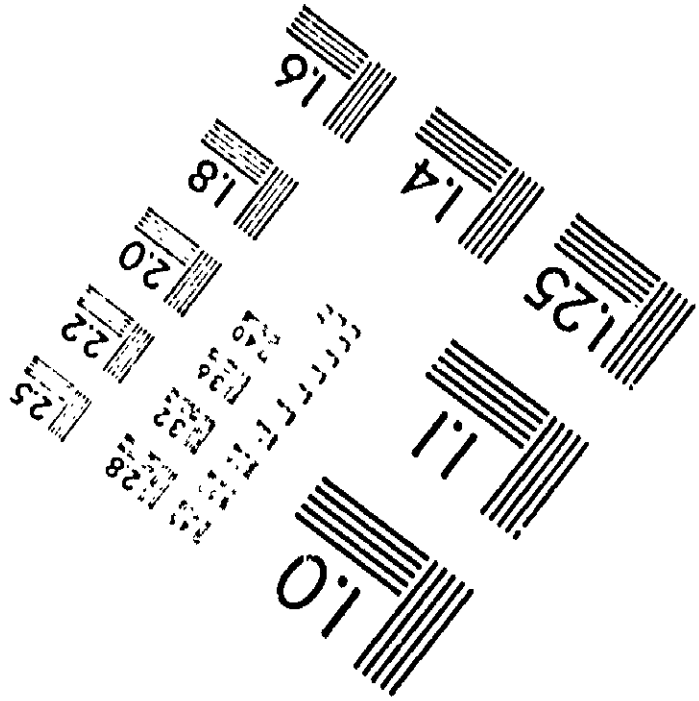
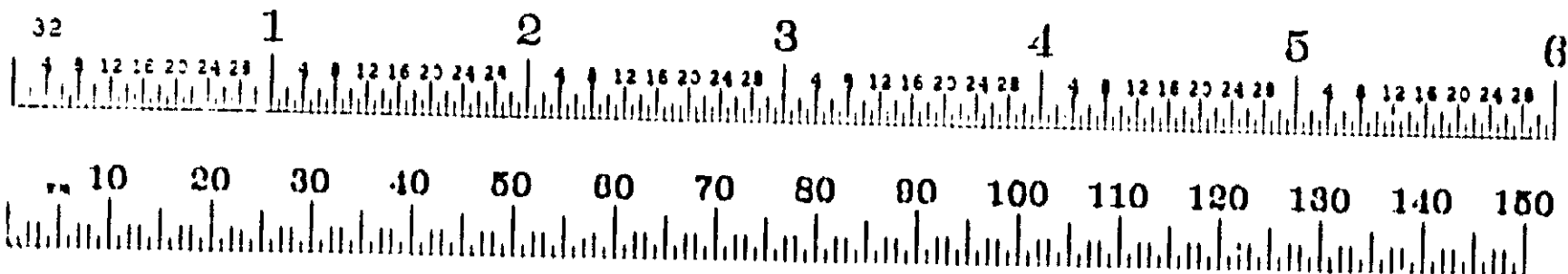
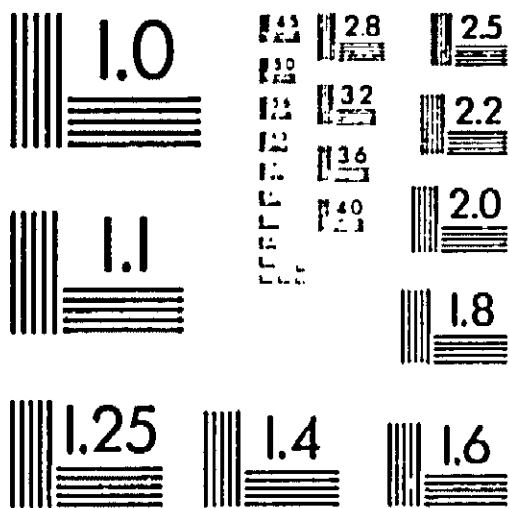
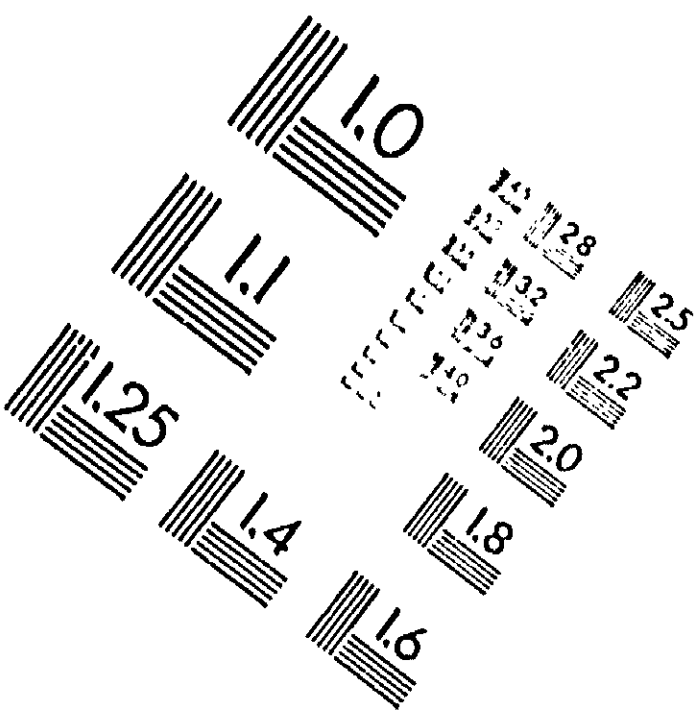
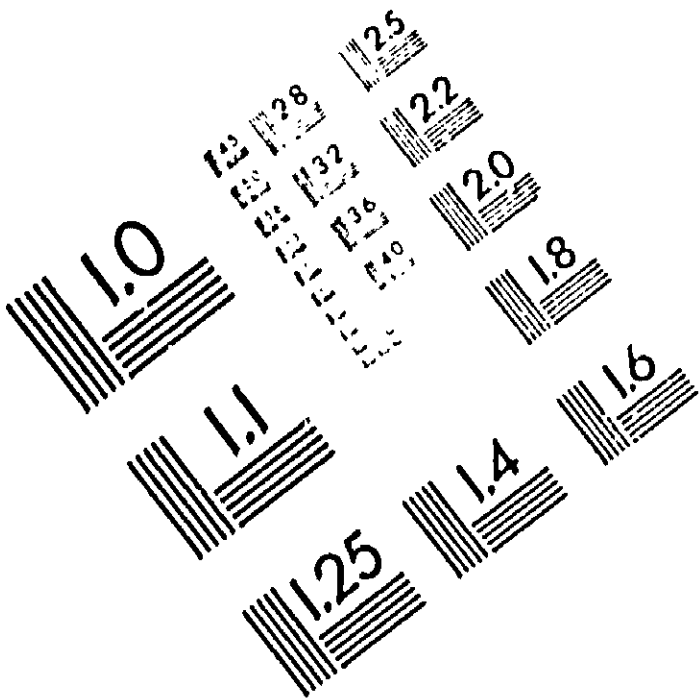


# IMAGE EVALUATION TEST TARGET (MT-3)



**APPLIED IMAGE**  
1653 E. MAIN STREET  
ROCHESTER, NY 14609  
TEL (716) 482-0300  
FAX (716) 288-5989

**A**

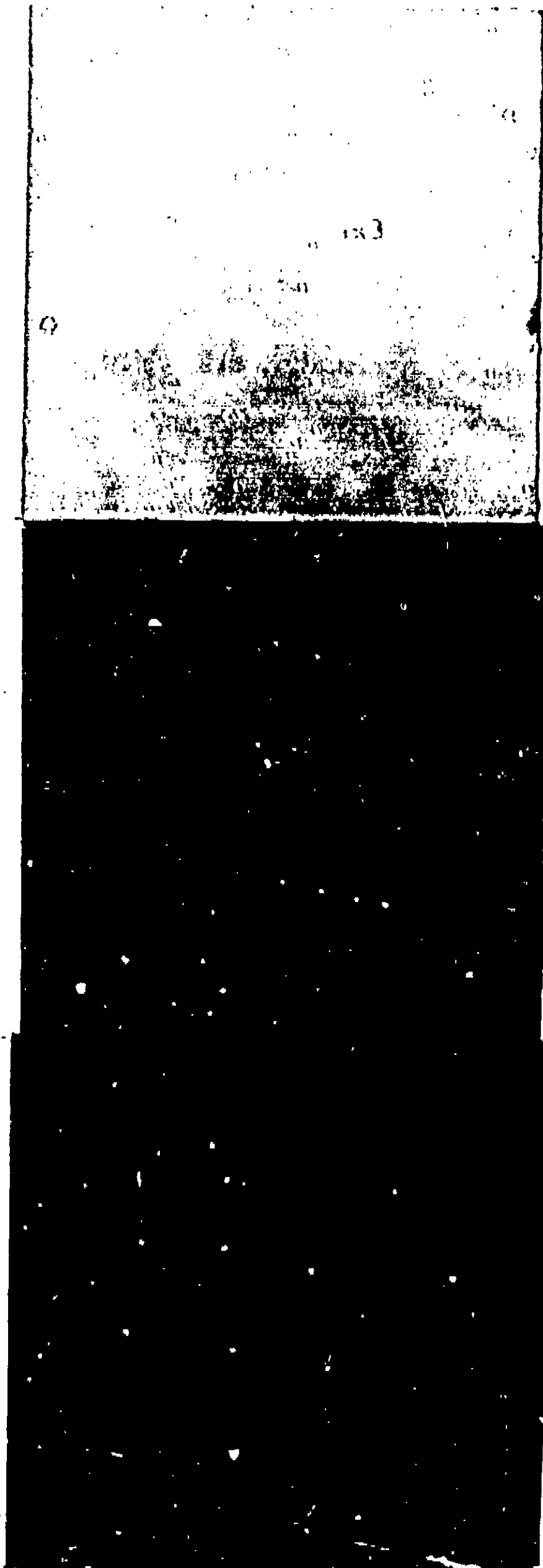
**D**

**B**

**E**

**C**

**F**







Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** QuesTech, Inc.

**File:** B-255095

**Date:** February 7, 1994

Jacob B. Pompan, Esq., Pompan, Ruffner & Werfel, for the protester.

Joel R. Feidelman, Esq., James J. McCullough, Esq., and Deneen J. Melander, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Science Applications International Corporation, an interested party.

Gregory H. Patkoff, Esq., and Mark Teskey, Esq., Department of the Air Force, for the agency.

Glenn G. Wolcott, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that agency's cost evaluation was flawed due to awardee's alleged failure to comply with Defense Federal Acquisition Regulation Supplement (DFARS) clause which was not included in solicitation, but which protester asserts should be "read into" the solicitation, is denied, since there is no legal authority to incorporate the clause into the solicitation and, in any event, awardee's proposal complied with the requirements of the clause.

2. Protest that agency was required to give evaluation preference or additional credit for protester's past performance as the incumbent contractor is denied where solicitation did not state that an offeror's past performance would be an evaluation factor.

### DECISION

QuesTech, Inc. protests the Department of the Air Force's award of a contract to Science Applications International Corporation (SAIC) under request for proposals (RFP) No. F33615-93-R-1227, to conduct research and development (R&D) and provide engineering and technical support for various facilities located at Wright-Patterson Air Force Base, Ohio. QuesTech, the incumbent contractor, protests that: SAIC's proposal failed to comply with the solicitation requirements; the agency failed to perform

a proper cost analysis; and the agency failed to consider QuesTech's incumbency in evaluating its technical proposal.

We deny the protest.

#### BACKGROUND

The agency issued the RFP on May 5, 1993, seeking proposals to conduct R&D, and to operate and maintain the Dynamic Infrared Missile Evaluator (DIME) and Electro-Optical Signature Analysis System (EOSAS) within the Avionics Directorate at Wright-Patterson Air Force Base, Ohio.<sup>1</sup> The RFP contemplated award of a cost-plus-fixed-fee contract for a base year and 4 option years.

The statement of work, in section C of the RFP, was divided into two major components: (1) operation and maintenance of the DIME and EOSAS facilities (referred to as "baseline support"), which included requirements to design, fabricate and document special test equipment; and (2) engineering support for various tasks (referred to as "tasking support"), which included requirements to modify major testing systems and "exploit" newly available missile hardware. Because the specific performance requirements could not be definitized at the time the solicitation was issued, the RFP contemplated issuance of various task orders throughout the contract period.

Section L of the RFP provided that offerors' cost proposals were to offer fixed labor rates for various labor categories. In total, the RFP required that offerors propose labor rates for 141,000 labor hours, 70,000 associated with the "baseline support" requirements and 71,000 associated with the "tasking support" requirements. Section L of the RFP provided a detailed breakdown of the various labor categories, the amounts of labor sought for each category, the facility (DIME or EOSAS) for which the labor would be provided, and the location (off-site or on-site) where the labor was to be performed.<sup>2</sup> Offerors

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<sup>1</sup>The DIME facility is used to develop and evaluate infrared countermeasure techniques against a variety of infrared missile guidance units. The EOSAS facility provides the capability for electro-optical aircraft signature analysis and creation of visible and infrared images for detection studies.

<sup>2</sup>For example, in connection with performing the "tasking support" requirements related to the DIME facility, offerors were required to propose fixed labor rates for: 10,000 hours (2,000 hours per year for 5 years) of on-site, senior  
(continued...)

were required to structure their cost proposals by offering rates for the specific categories of labor identified in section L.

Section M of the RFP provided that award would be made on the basis of an integrated assessment of the following factors, listed in descending order of importance: technical excellence, cost, and general considerations. Regarding technical excellence, the RFP identified four subfactors that would be considered in the evaluation.<sup>3</sup> Regarding cost, the RFP stated that cost proposals would be evaluated to ensure realism, reasonableness, and completeness. Regarding general considerations, the RFP stated that the evaluation would take into account "contractual terms and conditions; the results of pre-award surveys or the capability/capacity review, if applicable; and the availability of funds to meet the proposed termination liability funding profile." The RFP did not state that an offeror's past performance would be considered in the source selection process.

As amended, the RFP required that technical proposals be submitted by June 15, and cost proposals by June 22. QuesTech and SAIC timely submitted technical and cost proposals.

The procurement was conducted by the agency under the provisions of Air Force Regulation (AFR) 70-30, Appendix BB, "Streamlined Tailored Policies for Source Selections for Science and Technology." Under that regulation, the agency evaluated technical proposals using an adjectival rating

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<sup>2</sup>(...continued)

electrical engineering labor; 3,000 hours (600 hours per year for 5 years) of off-site, senior electrical engineering labor; 10,000 hours (2,000 hours per year for 5 years) of on-site, software engineering labor; 3,000 hours (600 hours per year for 5 years) of off-site, software engineering labor; 4,000 hours (800 hours per year for 5 years) of on-site technician labor and 3,000 hours (600 hours per year for 5 years) of off-site technician labor. Similar detailed requirements were provided with regard to "tasking support" for the EOSAS facility and for the required "baseline support" related to each facility.

<sup>3</sup>The subfactors, listed in descending order of importance, were: "special technical factors" (described as a consideration of the proposal's demonstration that the contractor has the personnel, expertise, and facilities required to perform the tasks listed in the statement of work); "understanding the problem"; "soundness of approach"; and "compliance with requirements."

system,<sup>4</sup> and concluded that the two proposals were technically equal based on the following ratings:

<u>Evaluation Factor</u>	<u>QuesTech</u>	<u>SAIC</u>
Technical Factors	Acceptable (+)	Acceptable (+)
Understanding Problem	Exceptional (-)	Exceptional (-)
Soundness of Approach	Acceptable (+)	Acceptable
<u>Compliance with Requirements</u>	<u>Acceptable</u>	<u>Exceptional (-)</u>
Overall Rating	Acceptable (+)	Acceptable (+)

Both offerors submitted cost proposals offering fixed-labor rates for the type, quantity, and location required by section L. Both offerors' rates were based on the assumption that their employees would work 45-hour weeks; however, the offerors' method of calculating wage rates differed. QuesTech calculated its proposed rates by dividing the weekly salaries of its proposed employees by 45 hours. SAIC calculated its proposed rates by dividing the weekly salaries of its proposed employees by 40 hours, and proposing 5 hours per week as uncompensated overtime. SAIC's proposal fully disclosed the intended use of uncompensated overtime. SAIC's proposed total cost was \$8,674,396; QuesTech's was \$8,841,320.

Based on the evaluation of cost and technical proposals, the agency awarded a contract to SAIC. With regard to the "baseline support" requirement for 70,000 hours, section B of SAIC's awarded contract specifically stated that:

"The personhours listed above are comprised of 65,560 costed labor hours and 4,440 uncompensated labor hours, in accordance with contractor's proposal number 01-0613-71-0940-004, dated 93 June 22.

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<sup>4</sup>The agency assigned the following adjectival ratings for each of the evaluation factors and subfactors identified in the RFP: "exceptional," "acceptable," "marginal," and "unacceptable." Each rating could be augmented or diminished with a "plus" (+) or "minus" (-), respectively.

"Uncompensated labor hours to be prorated over the life of the contract."

With regard to the "tasking support" requirement for 71,000 labor hours, section B of the awarded contract specifically stated that:

"The personhours listed above are comprised of 67,440 costed labor hours and 3,560 uncompensated labor hours, in accordance with contractor's proposal number 01-0613-71-0940-004, dated 93 June 22.

"Uncompensated labor hours to be prorated over the life of the contract."

QuesTech was subsequently notified of the award; this protest followed.

#### DISCUSSION

QuesTech first protests that the agency's cost evaluation of SAIC's proposal was flawed due to SAIC's proposed use of uncompensated overtime and SAIC's alleged failure to comply with a solicitation clause, contained in section 252.237-7019 of the Defense Federal Acquisition Regulation Supplement (DFARS), which requires offerors to identify proposed uncompensated overtime in their proposals. QuesTech acknowledges that the clause in DFARS § 252.237-7019 was not part of the solicitation, but argues that it should be "read into" the solicitation on the basis of the "Christian Doctrine." See G.L. Christian & Assocs. v. United States, 312 F.2d 418 (Ct. Cl.), cert. denied, 375 U.S. 954 (1963).<sup>5</sup>

The agency responds that this portion of QuesTech's protest is without merit for the following reasons. First, the agency states that the clause at DFARS § 252.237-7019 was not a mandatory provision for this procurement.<sup>6</sup> Next, the

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<sup>5</sup>In G.L. Christian, the Court of Claims concluded that certain mandatory contract clauses are incorporated, by law, into an otherwise validly awarded government contract.

<sup>6</sup>QuesTech's "Christian Doctrine" argument is based on its assertion that the clause is required by DFARS § 237.170, which directs inclusion of this clause in service contracts. The agency responds that this was a research and development contract, not a service contract, and that the requirements of DFARS § 237.170 therefore were inapplicable. Since we find this portion of QuesTech's protest to be without merit for other reasons, we need not resolve this issue.



XXXXX

agency argues that, even if the clause were mandatory, the "Christian Doctrine" is applicable only to contracts, not to solicitations. Finally, the agency notes that, even if the clause at DFARS § 252.237-7019 were "read into" this solicitation, Questech's protest is without merit because SAIC's proposal in fact complied with the requirements of that clause. The agency explains in this regard that SAIC clearly identified the uncompensated overtime in its proposal; the agency considered SAIC's proposed uncompensated overtime in its evaluation of SAIC's proposal; and, ultimately, the contract awarded to SAIC included an express provision requiring that SAIC perform the uncompensated overtime as set forth in its proposal.

Questech's assertion that the cost evaluation was flawed due to SAIC's alleged failure to comply with DFARS § 252.237-7019 is without merit.<sup>7</sup> The "Christian Doctrine" provides only for incorporation, by law, of certain mandatory contract clauses into otherwise validly awarded government contracts; it does not stand for the proposition that provisions are similarly incorporated, by law, into solicitations. See, e.g., American Imaging Servs., Inc.--Recon., B-250861.2, Jan. 5, 1993, 93-1 CPD ¶ 13; Data-products New England, Inc. et al., B-246149.3 et al., Feb. 26, 1992, 92-1 CPD ¶ 231; Diemaco, Inc., B-246065, Oct. 31, 1991, 91-2 CPD ¶ 414. In any event, SAIC's proposal and the agency's evaluation were consistent with the requirements of the DFARS clause: the proposal identified the uncompensated overtime proposed; the agency considered SAIC's proposed uncompensated overtime in its evaluation; and the contract ultimately included a provision mandating SAIC's delivery of the uncompensated overtime it proposed.<sup>8</sup>

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<sup>7</sup>To the extent Questech is protesting the fact that the solicitation did not include the DFARS clause, its protest is untimely. 4 C.F.R. § 21.2(a)(1) (1993).

<sup>8</sup>Questech also complains that the cost evaluation was improper in that it failed to reflect other factors, for example, "learning curve trends." The solicitation did not list as evaluation factors the items which Questech asserts should have been considered and the evaluation therefore was not flawed for failing to consider those items. The cost evaluation performed was adequate: the solicitation sought fixed-labor rates for specifically defined types and quantities of labor; both offerors submitted rates which were reasonable and which were verified by the Defense Contract Audit Agency; the offerors' proposals were technically equal; and the agency incorporated the requirement that SAIC perform the uncompensated overtime it proposed into the contract that was awarded.

QuesTech also protests that the source selection process was flawed in that it failed to reflect any evaluation preference or to provide any additional evaluation credit for QuesTech's past performance as the incumbent contractor. QuesTech asserts that it was "arbitrary and capricious [for the agency] to intentionally ignore the fact that [QuesTech was] the incumbent and to intentionally not provide an evaluation consideration for performance under that contract."<sup>9</sup> The agency responds that past performance was not specified as an evaluation factor in the solicitation, and that it therefore did not incorporate an evaluation of the offerors' past performance into the source selection decision.

In preparing a solicitation, a procuring agency has broad discretion in identifying the factors which will form the basis for the source selection decision. However, once the solicitation is issued and offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria in making its award decision, or inform all offerors of any significant changes made in the evaluation scheme. Greenebaum and Rose Assocs., B-227807, Aug. 31, 1987, 87-2 CPD ¶ 212. In short, agencies may not announce in the solicitation that they will use one evaluation plan, and then follow another. DynCorp, 71 Comp. Gen. 129 (1991), 91-2 CPD ¶ 575. Here, the solicitation did not list past performance as an evaluation factor. Accordingly, the agency properly declined to afford QuesTech an evaluation preference or additional credit based on the fact that it had, allegedly, performed successfully

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<sup>9</sup>To the extent QuesTech is protesting that the solicitation should have provided for consideration of past performance as an evaluation factor, its protest is untimely since it was not raised prior to the closing time for submission of proposals. 4 C.F.R. § 21.2(a)(1). To the extent QuesTech argues that Air Force Regulation (AFR) 70-30 (referenced in the solicitation) advised offerors that past performance would be an evaluation factor, the protest is without merit. First, AFR 70-30 permits, but does not require, consideration of past performance in assessing risk associated with a particular proposal. In any event, AFR 70-30 does not provide offerors a substantive basis to challenge an agency's award decision. Sabreliner Corp., B-242023, B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326.

as the incumbent contractor on the preceding contract. See  
Management Tech. Servs., B-251612.3, June 4, 1993, 92-1 CPD  
¶ 432.

The protest is denied.

*Ronald Berger*

for

Robert P. Murphy  
Acting General Counsel